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## **MINUTES OF COUNCIL REGULAR MEETING – MAY 6, 2008**

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THE WEST VALLEY CITY COUNCIL MET IN REGULAR SESSION ON TUESDAY, MAY 6, 2008, AT 6:30 P.M., IN THE COUNCIL CHAMBERS, WEST VALLEY CITY HALL, 3600 CONSTITUTION BOULEVARD, WEST VALLEY CITY, UTAH. THE MEETING WAS CALLED TO ORDER BY MAYOR NORDFELT.

THE FOLLOWING MEMBERS WERE PRESENT:

Dennis J. Nordfelt  
Russ Brooks  
Carolynn Burt  
Joel Coleman  
Corey Rushton  
Mike Winder

Wayne Pyle, City Manager  
Sheri McKendrick, City Recorder

ABSENT: Steve Vincent

STAFF PRESENT:

Paul Isaac, Assistant City Manager  
Richard Catten, City Attorney  
Jim Welch, Finance Director  
Russell Willardson, Public Works Director  
Buzz Nielsen, Police Chief  
Layne Morris, Community Preservation Director  
John Evans, Fire Chief  
Kevin Astill, Parks and Recreation Director  
Nicole Cottle, Law Department  
Aaron Crim, Administration  
Jake Arslanian, Public Works Department

**14030 OPENING CEREMONY**

The Opening Ceremony was conducted by Mike Winder who read anecdotes from his late grandfather, Ned Winder, a long-time resident of West Valley City.

**14031 SCOUTS**

Mayor Nordfelt welcomed Scout Troop Nos. 662, 672, 913 and 629 in attendance to complete requirements for the Citizenship in the Community and Communications merit badges.

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**14032      APPROVAL OF MINUTES OF STUDY MEETING HELD APRIL 8, 2008**

The Council read and considered the Minutes of the Regular Meeting held April 15, 2008. There were no changes corrections or deletions.

After discussion, Councilmember Brooks moved to approve the Minutes of the Regular Meeting held April 15, 2008, as written. Councilmember Coleman seconded the motion.

A roll call vote was taken:

|                |     |
|----------------|-----|
| Mr. Brooks     | Yes |
| Mr. Coleman    | Yes |
| Ms. Burt       | Yes |
| Mr. Winder     | Yes |
| Mr. Rushton    | Yes |
| Mayor Nordfelt | Yes |

Unanimous.

**14033      PROCLAMATION DECLARING MAY 6, 2008, AS EVAN K EXCELL DAY IN WEST VALLEY CITY**

Mayor Nordfelt read a Proclamation declaring May 6, 2008, as Evan K Excell Day in West Valley City.

**14034      COMMENT PERIOD**

Upon inquiry by Mayor Nordfelt, the following individuals addressed the City Council during the Comment Period:

Gerald Wise, 4025 South 6820 West, addressed the City Council. Mr. Wise spoke regarding a proposed tax increase. He indicated that at a previous hearing regarding the last property tax increase, he had stated he would go along with it if code enforcement, building inspection and law enforcement were improved. Mr. Wise stated he had since made several complaints to the appropriate staff in the CED Department and Police Department without success. He also gave details regarding complaints he had filed and communication with City staff. He indicated he appreciated improvements made in code enforcement, but other areas needed to also become a higher priority.

Scott Warr, 3154 South 3600 West, addressed the City Council. Mr. Warr stated he recently attended a public hearing regarding UTOPIA and he discussed comments and opinions expressed by members of the Council, including his reaction to those comments. He indicated he appreciated the concern of the

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Council and that they had “done their homework” regarding this issue. He also stated he would have voted with the majority of the Council and thanked them for the time, energy and thought that went into making that decision.

Mike Markham, 3008 Alice Circle, addressed the City Council. Mr. Markham stated he was in southern Utah recently and heard of new State legislation requiring licensing of rental properties and imposing stipulations regarding maintenance on such properties. He discussed homes in West Valley City that had been built as single-family homes, but were housing multiple families. He inquired regarding ordinances currently in place, as this had become a major problem in the City. Mayor Nordfelt encouraged Mr. Markham to direct his inquiries to City Manager, Wayne Pyle. Mayor Nordfelt also informed of the creation of the new Community Preservation Department, which would add additional staff to address some of the issues discussed above.

14035

**PUBLIC HEARING, APPLICATION NO. Z-3-2008, FILED BY L. THAD AND JUDITH BANGERTER, REQUESTING TO AMEND THE ZONING MAP FROM ZONE ‘A’ (AGRICULTURE) TO ZONE ‘R-1-8’ (RESIDENTIAL, SINGLE-FAMILY, MINIMUM 8,000 SQ. FT. LOT SIZE) FOR PROPERTY LOCATED AT 6536 WEST 3270 SOUTH**

City Manager, Wayne Pyle, stated a public hearing had been advertised for the Regular Council Meeting scheduled May 6, 2008, at 6:30 P.M., in order for the City Council to hear and consider public comments regarding Application No. Z-3-2008, filed by L. Thad and Judith Bangerter, requesting to amend the Zoning Map from zone ‘A’ (Agriculture) to zone ‘R-1-8’ (Residential, Single-Family, Minimum 8,000 sq. ft. lot size) for property located at 6536 West 3270 South. He discussed proposed Ordinance No. 08-22 related to the Application to be considered by the City Council subsequent to the public hearing, as follows:

City Manager, Wayne Pyle, presented proposed Ordinance No. 08-22 which would amend the Zoning Map to show a change of zone for property located at 6536 West 3270 South from zone ‘A’ (Agriculture) to zone ‘R-1-8’ (Residential, Single-Family, Minimum 8,000 sq. ft. lot size).

Mr. Pyle stated the applicants had requested a roughly two foot by 224-foot (521 square foot) portion of their 5.8 acre parcel be re-zoned from ‘A’ to ‘R-1-8.’ He indicated this portion adjoined a parcel zoned ‘R-1-8’ to the north also owned by the applicants. He further stated the newly zoned property would provide the applicants with enough area to subdivide the northern parcel into two residential lots. The remaining portion of the 5.8 acre parcel is to remain in the ‘A’ zone.

The City Manager reported the proposed minor subdivision would require extension of 6536 West, an existing stub street. He indicated although the

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extended street would be 223 feet in length, the City's Fire Marshal had not objected to the proposed extension and would not require a turnaround. He stated when the 5.8 acre parcel was developed in the future the stub street would connect with Gala Way (3360 South), an existing stub street in the Celebration #4 Subdivision.

Mr. Pyle indicated the re-zone would facilitate residential development consistent with the existing uses along 3270 South. He also indicated the parcel was currently designated as "large-lot residential" in the City's General Plan. He stated the minor subdivision was currently designated "low density residential" in the General Plan.

Mayor Nordfelt opened the public hearing. There being no one to speak either in favor or in opposition, Mayor Nordfelt closed the public hearing.

**ACTION: ORDINANCE NO. 08-22, AMENDING THE ZONING MAP TO SHOW CHANGE OF ZONE FOR PROPERTY LOCATED AT 6536 WEST 3270 SOUTH FROM ZONE A (AGRICULTURE) TO ZONE 'R-1-8' (RESIDENTIAL, SINGLE-FAMILY, MINIMUM 8,000 SQ. FT. LOT SIZE)**

The City Council previously held a public hearing regarding Application No. Z-3-2008, filed by L. Thad and Judith Bangerter, and proposed Ordinance No. 08-22 which would amend the Zoning Map to show change of zone for property located at 6536 West 32709 South from zone 'A' (Agriculture) to zone 'R-1-8' (Residential, Single-Family, Minimum 8,000 sq. ft. lot size).

After discussion, Councilmember Winder moved to approve Ordinance No. 08-22, an Ordinance Amending the Zoning Map to Show a Change of Zone for Property Located at 6536 West 3270 South From Zone 'A' (Agriculture) to Zone 'R-1-8' (Residential, Single Family, Minimum 8,000 sq. ft. lot size). Councilmember Coleman seconded the motion.

A roll call vote was taken:

|                |     |
|----------------|-----|
| Mr. Brooks     | Yes |
| Mr. Coleman    | Yes |
| Ms. Burt       | Yes |
| Mr. Winder     | Yes |
| Mr. Rushton    | Yes |
| Mayor Nordfelt | Yes |

Unanimous.

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### **PUBLIC HEARING, APPLICATION NO. S-9-2007, FILED BY IVORY HOMES, REQUESTING AN AMENDMENT OF THE WESTRIDGE ESTATES PHASE 4A SUBDIVISION LOCATED AT 5700 WEST 5400 SOUTH**

City Manager, Wayne Pyle, stated a public hearing had been advertised for the Regular Council Meeting scheduled May 6, 2008, at 6:30 P.M., in order for the City Council to hear and consider public comments regarding Application No. S-9-2007, filed by Ivory Homes, requesting an Amendment of the Westridge Estates Phase 4A Subdivision located at 5700 West 5400 South. He discussed proposed Ordinance No. 08-23 related to the Application to be considered by the City Council subsequent to the public hearing, as follows:

City Manager, Wayne Pyle, presented proposed Ordinance No. 08-23 which would approve the Amendment of Westridge Estates Phase 4A Subdivision located in West Valley City, Utah.

Mr. Pyle stated the proposed amendment would correct a number of errors on the recorded plat. He further stated the subdivision had been recorded with the Salt Lake County Recorder's Office in October of 2007. He indicated subsequent to the recordation of the plat, staff had learned that the recorded plat did not match the plat approved by the City.

The City Manager reported, as part of the City's approval, a number of notes had been required to be placed on the plat. Those notes were to address issues related to various drainage easements and the subdivision's proximity to West Ridge Golf Course and USANA Amphitheater. He noted that further exploration also revealed the approved cul-de-sac radius of 52 feet had actually been recorded at 53 feet.

Mr. Pyle stated the problem had come to light as the City Engineer responded to a grading and drainage issue with the developer's engineer. Upon learning of the problems, staff determined the best way to resolve the errors would be to amend the recorded subdivision plat, which would do the following:

1. Add certain notes that were omitted from the recorded plat
2. Provide language and locations of new drainage swales
3. Correct the right-of-way width for each cul-de-sac

Mayor Nordfelt opened the public hearing. There being no one to speak either in favor or in opposition, Mayor Nordfelt closed the public hearing.

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### **ACTION: ORDINANCE NO. 08-23, APPROVING THE AMENDMENT OF WESTRIDGE ESTATES PHASE 4A SUBDIVISION LOCATED IN WEST VALLEY CITY, UTAH**

The Council previously held a public hearing regarding Application No. S-9-2007, filed by Ivory Homes, and proposed Ordinance No. 08-23 which would approve the amendment of Westridge Estates Phase 4A Subdivision located in West Valley City, Utah.

After discussion, Councilmember Coleman moved to approve Ordinance No. 08-23, an Ordinance Approving the Amendment of the Westridge Estates Phase 4A Subdivision Located in West Valley City, Utah. Councilmember Burt seconded the motion.

A roll call vote was taken:

|                |     |
|----------------|-----|
| Mr. Brooks     | Yes |
| Mr. Coleman    | Yes |
| Ms. Burt       | Yes |
| Mr. Winder     | Yes |
| Mr. Rushton    | Yes |
| Mayor Nordfelt | Yes |

Unanimous.

14037

### **RESOLUTION NO. 08-127, ADOPT TENTATIVE BUDGET FOR FISCAL YEAR COMMENCING JULY 1, 2008, AND ENDING JUNE 30, 2009; SETTING A TAX RATE; AND SETTING A PUBLIC HEARING DATE**

City Manager, Wayne Pyle, presented proposed Resolution No. 08-127 which would adopt the Tentative Budget for the fiscal year commencing July 1, 2008, and ending June 30, 2009; set a tax rate; and set a public hearing date.

The City Manager explained two resolutions had been drafted with different public hearing dates, pending the Council's decisions regarding the truth in taxation process, i.e., judgment levy and/or tax increase (public hearing August 12, 2008) or no tax increase (public hearing June 3, 2008).

After discussion, Councilmember Winder moved to approve Resolution No. 08-127, a Resolution Adopting a Tentative Budget for the Fiscal Year Commencing July 1, 2008, and Ending June 30, 2009; Setting a Tax Rate; and Setting August 12, 2008, as the Date for Public Hearing for the Purpose of Considering a Judgment Levy Only and No Tax Increase. Councilmember Coleman seconded the motion.

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Upon further discussion, members of the City Council and staff discussed and commented as follows:

Councilmember Rushton expressed concurrence with Councilmember Winder's motion.

City Manager, Wayne Pyle, commented regarding budget discussions, efforts of staff in preparation of the budget, citizen requests, sources of revenues, and various philosophies. Mr. Pyle discussed impacts on certain services requested by citizens that would have to be cut if no tax increase was received. He also stated maintaining services had been addressed, but in order to grow and increase services the City Council would have to make a decision regarding a tax increase to address those needs. The City Manager requested the Council consider these facts in making the decision.

Councilmember Brooks expressed the need to control speeding in neighborhoods and that there would need to be additional resources to accomplish that. He stated the tax increase proposal was for services requested by residents. He further stated that at a public hearing two years ago some residents suggested to have a small tax increase every so often, rather than one large increase.

Councilmember Coleman stated he had seconded the above motion to move the business along. He also stated there was a compromise position between the motion and the City Manager's response: both took into account keeping the current fund balance. He indicated this year consideration should perhaps be given to using those funds due to the economic conditions and increased price of gas, food and other things which have and would burden the residents. He stated any tax increase this year might be "a difficult pill to swallow." He stated West Valley City was one of the most efficient and best run cities in the State. He indicated he remembered citizens stating they would like a small increase more often than one large one, but that went against his personal view. He stated the motion could be passed and a dialogue could continue regarding the tax increase proposal. Councilmember Coleman indicated the Council had not really discussed the tax increase proposal in detail and he would like to do so prior to the public hearing.

Councilmember Burt stated there had been a downturn in the economy making it difficult for many residents. She further stated people had great needs when the economy declined, with the City needing to increase some services because of that. She indicated the City was receiving less money from the Federal and State governments and in order to maintain current services and improve other services the Council needed to consider a proposed increase.

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Mayor Nordfelt commented that for four of his six years serving on the Council the City had been constantly faced with wanting to do more than funds would allow. He indicated some of those things had been paid for by using one-time monies which was not the best way to do business. He indicated citizens wanted and expected the City to do more in the area of public safety and code enforcement. He indicated the City was also falling further behind every year in maintenance of its parks. Mayor Nordfelt stated for many years taxes had not been raised, one-time monies had been used, and the “belt had been tightened,” but the City had reached the point where even a 64% tax increase would not allow more, but would only maintain the status quo. He stated the Council had a difficult decision to make as citizens had spoken “loud and clear” regarding the size of the last tax increase. He indicated citizens had not seen increased services or programs with that tax increase and there is an expectation the City would do better in the areas covered by the proposed tax increase this year. He indicated a modest tax increase would add to the services requested by the citizens. Mayor Nordfelt further discussed the amount of property tax actually coming to the City and the services provided for that money. He stated it would be appropriate to have a modest, small tax increase this year in order to provide quality service.

Councilmember Coleman stated the budget proposed by the City Manager was very impressive and represented a significant increase in services even without a tax increase. He indicated he did not think an increase would be appropriate this year. He stated maybe there was a compromise position and he desired more discussion by the City Council at a future study session.

City Manager, Wayne Pyle, clarified the decision before the Council was to set a date for a public hearing so the process could move forward.

Mayor Nordfelt recommended the motion be considered to be withdrawn, or not approved, and August 12, 2008, be set for the public hearing date with further discussion by the City Council regarding the proposed tax increase.

Councilmember Winder reviewed various points made by members of the Council and inquired if this would really be a good time for a tax increase and if the services proposed were actually needed. He stated a proposed tax increase would impact businesses and could possibly have a negative impact on economic development in the City. Councilmember Winder stated he desired his motion to stand.

City Manager, Wayne Pyle, clarified and discussed services that would or would not be affected by a tax increase. He also recommended that vital services, demanded by the City Council and citizens, be funded by the proposed tax increase.

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Finance Director, Jim Welch, clarified the budget process and stated the City Council was required to adopt a Tentative Budget and set a public hearing date, all pursuant to the State Code.

Mayor Nordfelt called for a vote on Councilmember Winder's motion.

A roll call vote was taken:

|                |     |
|----------------|-----|
| Mr. Brooks     | No  |
| Mr. Coleman    | No  |
| Ms. Burt       | No  |
| Mr. Winder     | Yes |
| Mr. Rushton    | Yes |
| Mayor Nordfelt | No  |

Motion failed – lack of majority.

After further discussion, Councilmember Coleman moved to approve Resolution No. 08-127, a Resolution Adopting a Tentative Budget for the Fiscal Year Commencing July 1, 2008, and Ending June 30, 2009; Setting a Tax Rate; and Setting August 12, 2008, as the Date for Public Hearing. Councilmember Burt seconded the motion.

A roll call vote was taken:

|                |     |
|----------------|-----|
| Mr. Brooks     | Yes |
| Mr. Coleman    | Yes |
| Ms. Burt       | Yes |
| Mr. Winder     | Yes |
| Mr. Rushton    | Yes |
| Mayor Nordfelt | Yes |

Unanimous.

14038

### **RESOLUTION NO. 08-128, APPROVE AGREEMENT WITH DODGE BILLINGSLEY FOR THE DISPLAY OF ARTWORK AT THE UTAH CULTURAL CELEBRATION CENTER**

City Manager, Wayne Pyle, presented proposed Resolution No. 08-128 which would approve an Agreement with Dodge Billingsley for the display of artwork at the Utah Cultural Celebration Center (UCCC).

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Mr. Pyle stated the Utah Cultural Celebration Center gallery was hosting an exhibit of original art works from China, entitled “From the Masses to the Masses: Art of the Yan’an Cave Artists Group.” The exhibit would run from May 9 through June 18, 2008. The collection was owned by local documentary film maker Dodge Billingsley who presents the exhibit in collaboration with the BYU Kennedy Center for International Studies. Rich in the folk traditions of rural peasant artists, this historical exhibit highlights the impact of politics on artists and their art during Mao’s China. He indicated the agreement between the City and the exhibit owner was being submitted for Council review and approval.

The City Manager reported the exhibit consisted of original art works acquired in numerous trips to China between 1999-2005. He indicated the collection was valued at approximately \$500,000. A free public opening and related film screening was being held Friday, May 9<sup>th</sup> from 6:00 – 8:00 P.M. He stated a sneak preview opening would be held on Thursday, May 8<sup>th</sup>, in partnership with the Utah Arts Council as part of their annual statewide conference being held at the UCCC facility. An audience of about 500 people was expected that evening. The UCCC would also host guided educational tours for student groups as well as offering an ARTrageous Tuesday program connected with the exhibit.

Mr. Pyle indicated the UCCC first became associated with Dodge Billingsley, the collection owner, in connection with the Chinese “Silk Road” exhibit at the UCCC in 2006. At that time, he expressed a desire to exhibit this historically significant collection here. There is no fee paid to the collection owner. Insurance coverage would be provided for the collection while housed in the UCCC facility under the limits of West Valley City’s URMMA policy. He also reported no additional coverage was anticipated.

After discussion, Councilmember Brooks moved to approve Resolution No. 08-128, a Resolution Authorizing the Execution of an Agreement between West Valley City and Dodge Billingsley for the Display of Artwork at the Utah Cultural Celebration Center (UCCC). Councilmember Coleman seconded the motion.

A roll call vote was taken:

|                |     |
|----------------|-----|
| Mr. Brooks     | Yes |
| Mr. Coleman    | Yes |
| Ms. Burt       | Yes |
| Mr. Winder     | Yes |
| Mr. Rushton    | Yes |
| Mayor Nordfelt | Yes |

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Unanimous.

14039

### **HEAR AND CONSIDER DATATIX-SLC APPEAL OF DENIAL OF RECORD REQUEST**

City Manager, Wayne Pyle, stated an appeal from DataTix-SLC regarding the denial of a record request had been scheduled to be heard and considered by the City Council. Mr. Pyle reviewed and discussed procedures to be followed by the appellant and City during the appeal hearing.

Mayor Nordfelt recognized the following individuals who addressed the City Council:

Don Winder, Attorney representing DataTix-SLC, addressed the City Council. Mr. Winder advised he was in attendance regarding a contract between AEG and the E-Center. He stated he was seeking the contract for several reasons including DataTix-SLC believed that it negotiated a new six year contract with the E-Center in December of 2006. He submitted an evidence summary which he reviewed in detail. He stated from December 2006, to last Fall everything went along according to the contract and \$100,000 was spent by DataTix-SLC to install new equipment, security and access systems. He indicated then the following happened: there was an announcement that AEG had signed a contract with the E-Center and Jim McNeil was invited to a meeting with Centennial Management and told that services of DataTix-SLC would no longer be needed; however, DataTix-SLC is still the ticketing provider and the agreement from December 2006 is still governing the relationship even through today's date. Mr. Winder stated he would like to see the contract with AEG so he could get an idea why DataTix-SLC was told they were not the ticketing provider anymore. He indicated the City stated they would not provide the contract with AEG, as it was not their contract. He questioned if the City had a part in the contract or agreement with AEG. He cited terms in the City's master lease agreement with the E-Center / Centennial Management. He stated the response from the City was that it did not have the document. He cited numerous cases in which you did not have to just be the owner of the real estate, you can be declared owner if you are the lessee or the tenant. He indicated the Legislature had said there was a constitutional right of access by the public to information regarding the public's dealings and if there was any doubt, access of information should be favored. He stated it was clear DataTix-SLC was entitled to the contract. He stated he was at this hearing because of a 10 year relationship with Jim McNeil in producing shows and selling tickets at the E-Center and the USANA Amphitheater. He indicated that in October 2006, when they were invited by Centennial Management to renegotiate the deal, they had sent a letter and he quoted language in the letter stating that Centennial operated as the City's agent with regard to the contract.

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Jim McNeil, 1532 E. Arlington, Salt Lake City, addressed the City Council. Mr. McNeil stated he had been partners since the E-Center opened and they had been asked to build an amphitheater and put \$12 million into it and the City invested a couple million too. He stated he felt good with the relationship with the City. He indicated when negotiating a deal with the City they had been asked to use E-Center staff and concessions, which they did. He stated that in December 2006, an arrangement had been reached which changed the old contract terms to new terms. He stated he had lived by those terms up through today. He stated in December of 2007, he had been informed that the E-Center was going with Ticketmaster. He stated he had made a deal with the E-Center in good faith and felt he was treated wrongly and desired the City to consider that.

Nicole Cottle, Law Department, stated there had not been a GRAMA (Government Records Management Act) appeal presented to the Council because the City followed the law. She advised the City Attorney had been the one making the initial response to the record request. Ms. Cottle advised there were typically 50-100 GRAMA requests received by the City each week and she discussed the way those requests were handled. She stated the premise was that documents were public and would be provided to a requestor. She indicated the next legal step would be to go to the State Code and that all GRAMA requests were different. She advised the first question to ask would be whether the request is a “record” and she read the definition as stated in the Code (Section 22(i)), which was the threshold question. Ms. Cottle explained the agreement requested by DataTix-SLC was between Centennial Management and AEG. She stated the City did own the E-Center and other facilities and had many contracts for those facilities to provide various services. She stated the fact the City had independent contractors did not give access to their contracts. She advised the threshold question was whether the City followed the law regarding if this was a record that could be produced and if the City had physical possession of the record. She also advised the agreement by the City was with Centennial, and they were not the City’s agent except for purchasing. She also stated as the requests had gone back and forth, City Attorney, Richard Catten had contacted staff at the E-Center and asked if they would be willing to provide the record, which they were willing to do with some redacted information. Ms. Cottle stated the bottom line was every document was public and the City would provide it if in its possession. She stated in this case the City was not in possession of the record and could therefore not produce it.

Don Winder stated he was not aware of an offer to produce a redacted copy and he would have accepted such an offer. He stated there had been no correspondence to that effect. He indicated records owned by a governmental entity had to be produced and if the City owned the E-Center it should have to produce the record. He indicated the Centennial document stated they were the

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City's agent so the City should produce the record. He stated this was about a relationship of a decade that was being unraveled and litigation filed. He stated he would like to see a solution to the problems. He indicated there had been no counter proposals to stop what could happen and that was the real reason for the hearing this night.

Upon discussion, members of the City Council inquired as follows:

Councilmember Rushton inquired regarding wording in the contract designating the E-Center as a non-agent. Don Winder drew attention to a letter that had been distributed and stated the parties could orally modify the written contract at any time. He indicated Centennial said it had been restructured. Nicole Cottle, Law Department, advised the contract required amending in writing with approval of the City Council. Don Winder suggested that could be dispensed with according to case law. Ms. Cottle stated the suggestion in the letter did not relate to the contractual obligation. Don Winder stated this would be a public document and they were not seeking proprietary information, as they wanted a contract regarding a venue owned by the City.

Councilmember Coleman stated Centennial Management was a private corporation and if they refused to provide the document the City could not provide it if not in its possession.

Don Winder stated he did not understand why the contract had not been given to the City.

Councilmember Burt inquired if the E-Center Manager, Kevin Bruder, negotiated the subject contract. Nicole Cottle, Law Department, reiterated the subject contract was between Centennial and AEG, with the City not being a party. Councilmember Burt inquired if the Kevin Bruder was paid by the City. Ms. Cottle answered in the negative.

Councilmember Coleman inquired if the ticketing companies were considered subcontractors of Centennial or the City. Ms. Cottle responded the contract was between Centennial and the ticket handler and not with the City. They would be deemed a subcontractor of our contractor, Centennial.

Mayor Nordfelt inquired if an oral contract could be in place for six years.

Don Winder responded the City would say no because there is a statute of frauds. An agreement to be performed for longer than a year or involving real estate has to be in writing. Case law will tell you once you start performing an oral contract

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that does away with the statute of frauds argument. We have been performing under that oral contract for a year and a half.

Councilmember Winder inquired if there was precedence in Utah or elsewhere, where a City or governmental entity had been requested for a document that they did not have, but one of their contractors had.

Don Winder indicated he could not find anything in Utah.

Nicole Cottle, Law Department, stated there was not anything in Utah, as our statute was specific to our state.

Councilmember Rushton inquired regarding the City's ownership of the E-Center.

Ms. Cottle responded the City did own the building just like public roads and other facilities in the City. She stated the building was owned through the Municipal Building Authority. The fact that we have a contractor working in or running the building is the same as a contractor washing the windows of City Hall.

Mayor Nordfelt inquired if Mr. Don Winder was representing the hockey league that the Utah Grizzlies used to play for, if he would feel justified in coming to the City for a copy of that contract.

Don Winder indicated he did not know, as there were differences. It goes to the fundamentals when the manager of the building that the City owns is dealing with ticketing services and promoting events.

Councilmember Winder inquired if the 2002 contract with Centennial gave the City any right to approve or sign off on any decisions made by Centennial. Ms. Cottle responded in the negative.

Councilmember Coleman inquired if the City had any access to information regarding Centennial's employees. Ms. Cottle responded that the City does not hold those records in our ownership.

Upon inquiry, there were no more questions from the City Council.

Mayor Nordfelt expressed appreciation to Jim McNeil and stated he recognized he put himself and his finances at great personal risk as a partner with the City. He also stated he was certain the E-Center would not be as successful as it was without Mr. McNeil's involvement. He also thanked Mr. McNeil for his investment in the USANA Amphitheater. Mayor Nordfelt stated the Council

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could not act on that gratitude. In this case we had to look strictly at the law and avoid setting any precedent that would be contrary to the strict application of the law.

Don Winder indicated his agreement to Mayor Nordfelt's comments. He stated the broader picture was to continue dialog separate and apart from the GRAMA issue, to see if the relationship with Jim McNeil could not be made right and continue the partnership.

Mayor Nordfelt indicated his wish that this discussion be held earlier, as he understood a law suit had been filed.

Don Winder indicated that was the case, however, it was never too late. He and Mr. McNeil were willing to talk anytime.

Councilmember Burt noted language in a letter from Kevin Bruder, Manager of the E-Center, stating they hoped to discuss the future of ticketing at the E-Center and would appreciate a proposal from DataTix regarding new ticketing service agreements.

Don Winder stated in October of 2006, DataTix immediately sent a proposal and a counter proposal came back. Another proposal was made, there was a meeting in December that everyone attended and in which an agreement was reached. Hands were shaken and everyone left figuring there was a deal. That held up for almost a year and then AEG got a contract and things changed. In December of 2007, Mr. McNeil was told his services were no longer needed.

Councilmember Coleman made comments regarding the GRAMA law and stated he did not see how this law could be possibly stretched to authorize a governmental entity to reach into the records of a private corporation. Unfortunately, that puts us on the other side of the argument with our friend, Jim McNeil. He inquired of the City Manager how the Council should proceed.

City Manager, Wayne Pyle, indicated the Council could take a vote tonight and decide the matter right now; or take the matter under advisement and then issue a written decision to Mr. Don Winder and Mr. Jim McNeil.

Mayor Nordfelt stated Mr. McNeil was a good partner and friend, and so was Centennial Management.

Councilmember Brooks stated his recollection of Centennial Management as an agent for the City for purchasing purposes. He requested clarification from the City Manager. City Manager, Wayne Pyle, explained the operations of

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## **MINUTES OF COUNCIL REGULAR MEETING – MAY 6, 2008**

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Centennial Management in handling all of the day to day functions of the E-Center.

In response to inquiry by Mayor Nordfelt, Nicole Cottle, Law Department, showed a copy of a letter regarding an offer for a redacted copy of the subject agreement. Don Winder indicated they were unaware of that offer.

Richard Catten, City Attorney, addressed the City Council and stated he and Mr. Don Winder had several conversations when the subject document was first requested. Each time they had a conversation, he suggested that the request for the document be made to Centennial Management. Mr. Catten indicated he also put that in writing in a letter. At the time of the conversations he did not think Centennial had decided whether or not to give up the document, so he did not make the offer that a redacted copy was available. It later became known to him that Centennial would give the redacted copy, if in fact asked. He did not ever specifically tell Mr. Don Winder that, but Mr. Winder also never did ask Centennial for the document to his knowledge. That was what he had been told by Centennial.

Don Winder indicated they had asked Centennial for the document.

Mayor Nordfelt stated unless staff recommended differently, he was prepared to recommend the Council make a decision. He recommended the Council make a motion to deny the appeal, as he believed staff had followed the law.

After further discussion, Councilmember Rushton moved to deny the appeal filed by DataTix-SLC and uphold the decision made by City staff. Councilmember Brooks seconded the motion.

Councilmember Winder declared he would abstain from the vote as he was related to the appellant's counsel, Don Winder.

A roll call vote was taken:

|                |         |
|----------------|---------|
| Mr. Brooks     | Yes     |
| Mr. Coleman    | Yes     |
| Ms. Burt       | Yes     |
| Mr. Winder     | Abstain |
| Mr. Rushton    | Yes     |
| Mayor Nordfelt | Yes     |

Unanimous.

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14040

### **APPLICATION NO. S-20-2007, FILED BY RICHARD BURROLA, REQUESTING FINAL PLAT APPROVAL FOR BURROLA SUBDIVISION LOCATED AT 5325 WEST 4100 SOUTH**

City Manager, Wayne Pyle, presented Application No. S-20-2007, filed by Richard Burrola, requesting final plat approval for Burrola Subdivision located at 5325 West 4100 South.

The City Manager reported the subdivision would consist of two lots. In order to subdivide the property, the applicant petitioned a frontage variance from the Board of Adjustment. A variance had been granted by the Board of Adjustment in November 2002, which allowed the frontage on Lot 1 to be 68 feet where 80 feet is required. All other provisions of the 'R-1-8' zone would be met as part of this application.

Mr. Pyle stated access to the subdivision would be gained from 4100 South. He also stated decision and improvements along the frontage of the property had been made at the time the City completed its road project a number of years ago. The developer would be responsible to replace or repair any existing damage, or damage that might result from new construction.

The City Manager indicated, as with all new subdivision development, there was a concern with the potential of ground water impacts. The applicant had requested the soils report for the Pheasant Park Subdivision to the east and south be allowed to establish the basement depth of the new dwelling. A review of the report indicated ground water had not been encountered in this area of the subdivision.

Upon inquiry by Councilmember Rushton regarding the subdivision approval process, water issues and the decision by staff regarding the soils test; City Manager, Wayne Pyle, CED Director, Joseph Moore, and Public Works Director, Russell Willardson, responded to those questions.

After further discussion, Councilmember Burt moved to approve Application No. S-20-2007, filed by Richard Burrola, and give final plat approval for Burrola Subdivision located at 5325 West 4100 South. Councilmember Coleman seconded the motion.

A roll call vote was taken:

|             |     |
|-------------|-----|
| Mr. Brooks  | Yes |
| Mr. Coleman | Yes |
| Ms. Burt    | Yes |
| Mr. Winder  | Yes |

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|----------------|-----|
| Mr. Rushton    | Yes |
| Mayor Nordfelt | Yes |

Unanimous.

14041

**APPLICATION NO. S-26-2007, FILED BY LIBERTY HOMES, REQUESTING FINAL PLAT APPROVAL FOR VISTAS AT WESTRIDGE PHASE 3E SUBDIVISION LOCATED AT 4650 SOUTH 6100 WEST**

City Manager, Wayne Pyle, presented Application No. S-26-2007, filed by Liberty Homes, requesting final plat approval for Vistas at Westridge Phase 3E Subdivision located at 4650 South 6100 West.

Mr. Pyle stated this phase represented the last phase of the smaller lots platted as part of the Vistas Subdivision. He also stated Phase 3E consisted of 35 lots on approximately 5.6 acres with the minimum lot size at 5,000 square feet. He indicated all lots were fairly uniform in their design and met the area and frontage requirements of the 'R-1-4' zone.

The City Manager reported access to this phase would be gained from stub streets in Phases 3C and 3D. All streets would be dedicated and consist of a 56 foot right-of-way. The cross section did allow for a five foot walk and a six foot park strip.

Mr. Pyle stated the subdivision sloped from the south to the north. He further stated the slope of the property could create problems for home owners due to the small lots. He indicated the grading and drainage plan would be evaluated by the City Engineering Division. He stated, as had been done in previous phases with small lots, retaining walls might be required especially between phases where residential units backed one another. He indicated the Engineering Division would coordinate the improvements with the applicant.

The City Manager reported the original geotechnical report indicated subsurface water had been encountered in the area at a depth of approximately five feet. The developer had installed a land drain system in order to allow basements. He indicated to date, staff was not aware of any major concerns regarding the effectiveness of the land drain system. Because ground water impacts had been a challenging part of this development, the Public Works Department continued to coordinate these issues with the developer.

Mr. Pyle stated the subject subdivision was located in the overpressure zone and City ordinance would require certain construction standards, specifically stronger windows be applied for new dwellings.

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## **MINUTES OF COUNCIL REGULAR MEETING – MAY 6, 2008**

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The City Manager explained, as with all phases of this subdivision, concerns had been expressed about the potential impacts from the manufacturing uses to the south and from the USANA Amphitheater. He stated the development agreement had been modified to reflect those concerns. As a result, a note would need to be placed on the plat identifying this subdivision as an area that might be subject to noise from the USANA Amphitheater and from noise and odors associated with manufacturing uses.

After discussion, Councilmember Coleman moved to approve Application No. S-26-2007, filed by Liberty Homes, and give final plat approval for Vistas at Westridge Phase 3E located at 4650 South 6100 West. Councilmember Brooks seconded the motion.

A roll call vote was taken:

|                |     |
|----------------|-----|
| Mr. Brooks     | Yes |
| Mr. Coleman    | Yes |
| Ms. Burt       | Yes |
| Mr. Winder     | Yes |
| Mr. Rushton    | Yes |
| Mayor Nordfelt | Yes |

Unanimous.

14042

### **APPLICATION NO. S-11-2008, FILED BY RB&G ENGINEERING, REQUESTING FINAL PLAT APPROVAL FOR HONEYWELL SUBDIVISION PLAT A LOCATED AT 4603 WEST 2100 SOUTH**

City Manager, Wayne Pyle, presented Application No. S-11-2008, filed by RB&G Engineering, requesting final plat approval for Honeywell Subdivision Plat A located at 4603 West 2100 South.

Mr. Pyle stated the proposed subdivision was located in the manufacturing zone adjacent to 2100 South. He further stated, at the present time, the property consisted of one parcel approximately 14.4 acres in size. He explained an existing building was located on Lot 2 behind Johnson Matthey, Inc. He stated the proposed subdivision would divide the existing parcel into three separate lots.

The City Manager reported access to Lots 1 and 2 would be gained from 2100 South. Although Lot 2 would gain access from 2100 South, it would be a flag lot in the subdivision. Lots 1 and 2 contained 3.3 and 5.4 acres, respectively. Lot 3 would gain access from a private street to the west and consist of 5.6 acres. Lot 3 would be purchased by C.R. England Company. He further indicated, as C.R.

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## **MINUTES OF COUNCIL REGULAR MEETING – MAY 6, 2008**

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England owned the private road and property to the west, creating this lot without frontage along 2100 South would be acceptable.

After discussion, Councilmember Winder moved to approve Application No. S-11-2008, filed by RB&G Engineering, and give final plat approval for Honeywell Subdivision Plat A Located at 4603 West 2100 South. Councilmember Coleman seconded the motion.

A roll call vote was taken:

|                |     |
|----------------|-----|
| Mr. Brooks     | Yes |
| Mr. Coleman    | Yes |
| Ms. Burt       | Yes |
| Mr. Winder     | Yes |
| Mr. Rushton    | Yes |
| Mayor Nordfelt | Yes |

Unanimous.

THERE BEING NO FURTHER BUSINESS OF THE WEST VALLEY CITY COUNCIL, THE REGULAR MEETING OF TUESDAY, MAY 6, 2008, WAS ADJOURNED AT 8:30 P.M., BY MAYOR NORDFELT.

I hereby certify the foregoing to be a true, accurate and complete record of the proceedings of the Regular Meeting of the West Valley City Council held Tuesday, May 6, 2008.

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Sheri McKendrick, MMC  
City Recorder

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